

BEFORE THE  
AMERICAN ARBITRATION ASSOCIATION

TRANSCRIPT OF PROCEEDINGS  
NOVEMBER 30, 2023, VOLUME 4

IN THE MATTER OF THE ARBITRATION BETWEEN:

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GoodRx, Inc.,

Claimant,

vs.

CASE NO. 01-23-0000-5919

Famulus Health LLC,

Respondent.

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TIME: 9:02 A.M.

LOCATION: THE WESTIN HILTON HEAD ISLAND  
RESORT & SPA  
HILTON HEAD ISLAND,  
SOUTH CAROLINA

REPORTED BY: TERI L. KENNELLY, RPR, CRR  
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1 not going to go ahead and let you have the  
2 pricing so we had to be the API that served as  
3 like the safe house between both parties.

4 Q. So let me make sure I understand that,  
5 Mr. Szwajkos. At this point in time were you  
6 still contemplating using GoodRx technology?

7 A. Yeah, because the API just calls on  
8 multiple discount cards but they would still be  
9 the pre and post --

10 (Reporter requested clarification.)

11 A. The API -- you have to understand the  
12 tech stack.

13 Q. I'm sorry. If we can just stick with my  
14 question so that we don't -- we're not here all  
15 day. My question is to be -- so to be clear, in  
16 this version of statement of work, you were  
17 proposing to use GoodRx's technology? That was  
18 the question.

19 A. We were proposing in this statement of  
20 work to use our API to look up multiple discount  
21 cards.

22 Q. And what you were trying to also -- what  
23 you were trying to get GoodRx to agree to here is  
24 that you could use multiple discount cards, not  
25 just GoodRx for the Prime technology. That's why

1     you made these edits.

2             A.   We made these edits because, yes, we had  
3     started those conversations.   Prime would never  
4     go forward with just GoodRx.

5             Q.   Now, after a few more months of trying  
6     to get a deal done with GoodRx, Banshi Nagji from  
7     GoodRx got involved in trying to help get a deal  
8     done, right?

9             A.   That is correct.

10            Q.   And Mr. Nagji was willing to consider  
11    allowing an exception for Prime and allowing  
12    Famulus to include other discount cards in the  
13    solution for Prime.   That's what you discussed  
14    with him, right?

15            A.   That is correct.   And we were thrilled  
16    to hear what Banshi had to say.

17            Q.   And in exchange for allowing an  
18    exception to exclusivity for Prime, GoodRx wanted  
19    certain economic protections like guarantees or  
20    make-up payments in the event another card was  
21    selected over GoodRx, right?

22            A.   That is correct.

23            Q.   And you-all recall you were actually the  
24    one who raised the idea of like a 95 or 96  
25    percent guarantee for GoodRx, right?

1           A. Yes, because we were basically saying,  
2 hey, we understand we have an exclusive  
3 arrangement with you so 95 percent of the  
4 business is pretty much almost exclusive. We  
5 were trying to accommodate both parties.

6           Q. And now you had a call -- you had a call  
7 with Mr. Nagji in December of 2021 where you  
8 discussed all of this, right?

9           A. Yes, we did, and we actually requested  
10 that call.

11          Q. Okay. Now, let me ask you to take a  
12 look at Exhibit 78. Exhibit 78 is an e-mail that  
13 you sent to Bansi Nagji, Cynthia Meiners, and  
14 Mark Stetson from GoodRx on December 22, 2021,  
15 after your call with them, right?

16          A. That is correct.

17          Q. And under Action Items for Famulus, one  
18 of the things you wrote was, The agreement will  
19 lift the nonexclusive language for Prime. Do you  
20 see that?

21          A. Yes, I do.

22          Q. And the reason why you said that is  
23 because you knew you needed GoodRx to agree to  
24 make an exception for Prime or else you would be  
25 violating the exclusivity clause contained in

1 your agreement with GoodRx, right?

2 A. That is correct.

3 Q. Now, I want to ask you to look at  
4 Claimant's Exhibit 79. And Claimant's Exhibit 79  
5 is an e-mail from you to Mr. Nagji and  
6 Ms. Meiners, copying Mike Waterbury from  
7 Goodroot, dated January 3rd, 2022, right?

8 A. That is correct.

9 Q. And attached to this e-mail is the  
10 draft -- is a draft of a statement of work that  
11 your side prepared after the meeting and provided  
12 to GoodRx, right?

13 A. That is correct.

14 Q. And if we look at the attached statement  
15 of work, C-79, page 3 --

16 A. Yes.

17 Q. -- what you wrote under Exclusivity is,  
18 This -- I think you probably meant "the" but  
19 "This parties agree that any exclusivity language  
20 in the agreement is no longer in effect as of the  
21 work order date set forth above," right?

22 A. Yes, that's correct.

23 Q. Your proposal does not include any of  
24 the economic proposals you discussed with GoodRx  
25 on the call, right?

1           A. They were still working those out with  
2           them. We were trying to find another that made  
3           sense.

4           Q. I won't find any mention of statement of  
5           work about 95 or 96 percent volume commitments,  
6           correct?

7           A. Statement of work speaks for itself,  
8           David.

9           Q. I won't find any reference in this  
10          statement of work about the make-up payments if  
11          GoodRx's cash claim wasn't selected, correct?

12          A. You have a copy of this statement of  
13          work.

14          Q. And ultimately you and GoodRx could not  
15          get to an alignment on a deal for Prime, right?

16          A. We worked tirelessly hard to get to a  
17          deal with them. I think all parties wanted to.  
18          Respectfully, if I think we had a shot to  
19          negotiate directly with Bansi from the beginning,  
20          we would have had a better chance.

21          Q. And even though you couldn't get  
22          alignment on a deal with GoodRx for Prime,  
23          Famulus went ahead anyway with Prime and has been  
24          servicing Prime since at least August of 2022,  
25          right?

1           A. We have been servicing Prime since  
2 August 18th of 2022.

3           Q. And the Prime program includes multiple  
4 cash cards that do not include GoodRx, correct?

5           A. That is correct.

6           Q. Now --

7           A. That period of time, we also were not  
8 under contract with GoodRx.

9           Q. We're going to get into that a little  
10 bit later too. Yesterday --

11                       MR. LENDER: Your Honor, may I  
12 approach?

13                       THE ARBITRATOR: Sure.

14           Q. Yesterday -- I'm only using this for  
15 context. Yesterday you will recall that  
16 Ms. Farnsworth showed you Respondent's Exhibit  
17 78, and she actually had you read this entire  
18 letter into the record. Do you remember that?

19           A. That's correct.

20           Q. I wanted to show you, if I could,  
21 Respondent's Exhibit 79. Is Respondent's Exhibit  
22 79 Ms. Meiners' response to your May 20th, 2022,  
23 letter that Ms. Farnsworth had you read into the  
24 record?

25           A. Yes, it is.